



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 2, 2012

Mr. Charles H. Weir  
Assistant City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283

OR2012-06362

Dear Mr. Weir:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 452901.

The San Antonio Police Department (the "department") received a request for a specified offense report and its related photographs. You claim the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information made confidential by other statutes, including section 261.201 of the Family Code. Section 261.201 provides in relevant part:

(a) [T]he following information is confidential, is not subject to public release under [the Act] and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

...

(k) Notwithstanding Subsection (a), an investigating agency, other than the [Texas Department of Family and Protective Services] or the Texas Youth Commission, on request, shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect, or to the child if the child is at least 18 years of age, information concerning the reported abuse or neglect that would otherwise be confidential under this section. The investigating agency shall withhold information under this subsection if the parent, managing conservator, or other legal representative of the child requesting the information is alleged to have committed the abuse or neglect.

(l) Before a child or a parent, managing conservator, or other legal representative of a child may inspect or copy a record or file concerning the child under Subsection (k), the custodian of the record or file must redact:

...

(2) any information that is excepted from required disclosure under [the Act], or other law; and

(3) the identity of the person who made the report.

Fam. Code § 261.201(a), (k), (l). We find the submitted information was used or developed in an investigation of alleged or suspected child abuse under chapter 261 of the Family Code. *See id.* §§ 261.001(1) (defining “abuse” for purposes of Fam. Code ch. 261), 101.003 (defining “child” for purposes of Fam. Code title 5). However, the requestor is a parent of the child victim listed in the submitted information and is not alleged to have committed the suspected abuse or neglect. Accordingly, the submitted information may not be withheld from this requestor on the basis of section 261.201(a). *See id.* § 261.201(k). However, section 261.201(l) states before a parent can copy and inspect a record of her child under section 261.201(k), the identity of the reporting party must be redacted. *Id.* § 261.201(l)(3). Further, section 261.201(l)(2) states any information excepted from required disclosure under the Act or other law must be withheld from disclosure. *Id.* § 261.201(l)(2). Thus, we will address your remaining argument against disclosure of the submitted information.

We note the submitted information contains a medical record. Section 552.101 also encompasses the Medical Practice Act (the “MPA”), subtitle B of title 3 of the Occupations Code, which pertains to medical records. *See Occ. Code* §§ 151.001-165.160. Section 159.002 of the MPA provides, in part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

*Id.* § 159.002(b), (c). Information subject to the MPA includes both medical records and information obtained from those medical records. *See id.* §§ 159.002, .004; Open Records Decision No. 598 (1991). This office has concluded the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. *See* Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982). We have marked a medical record relating to the requestor's child. We note medical records involving a minor may be released under the MPA with the parent's or legal guardian's signed, written consent, provided the consent specifies 1) the information to be covered by the release, 2) the reasons or purposes for the release, and 3) the person to whom the information is to be released. Occ. Code §§ 159.004, .005. Therefore, the department must release the medical record we have marked if it receives consent from the requestor that complies with the MPA. Further, although you raise section 552.108 for the marked medical record, the MPA prevails over the general exceptions to disclosure under the Act. *See* Open Records Decision Nos. 613 at 4 (1993) (exceptions in Act cannot impinge on statutory right of access to information), 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under the Act). Accordingly, the department may not withhold the marked medical record under section 552.108. However, we will consider your argument under section 552.108 for the remaining information not subject to the MPA.

Section 552.108(a)(1) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108(a)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the submitted information relates to an open investigation. Based on this representation and our review, we conclude release of the remaining information would interfere with the detection, investigation, or prosecution of a crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975) (court delineates law enforcement interests that are present in active cases), *writ ref'd per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, section 552.108(a)(1) of the Government Code is applicable to the remaining information.

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the basic front-page information held to be public in *Houston Chronicle Publ'g Co.* Accordingly, the department must release basic offense and arrest information, including a detailed description of the offense, even if the information does not literally appear on the front page of an offense or arrest report. *See* Open Records Decision No. 127 (1976)

(summarizing types of information considered to be basic information). As noted above, section 261.201(1)(3) of the Family Code requires the identity of the reporting party be redacted from any information being released to the parent of a child victim. Therefore, when releasing basic information under section 552.108(c) of the Government Code, the department must withhold the identity of the reporting party, which we have marked, under section 261.201(1)(3) of the Family Code.<sup>1</sup>

In summary, the department must release the marked medical record if it receives proper authorization for its release under the MPA. With the exception of basic information, the department may withhold the remaining information under section 552.108(a)(1) of the Government Code. In releasing basic information, the department must withhold the information we have marked under section 261.201(1)(3) of the Family Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Jessica Marsh  
Assistant Attorney General  
Open Records Division

JM/em

Ref: ID# 452901

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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<sup>1</sup>As noted, the requestor has a right of access under section 261.201(k) of the Family Code to the information being released. Accordingly, if the department receives another request for this information from a different requestor, it must again seek a ruling from this office.